

1 Section 103, 42 U.S.C. § 9603 or EPCRA Section 304, 42 U.S.C.
2 § 11004.

3 C. Within twenty (20) days of the onset of such an event,
4 Settling Work Defendant shall furnish to Plaintiffs a written
5 report, signed by the Settling Work Defendant's Project
6 Coordinator, setting forth the events which occurred and the
7 measures taken, and to be taken, in response thereto. Within
8 thirty (30) days of the conclusion of such an event, Settling
9 Work Defendant shall submit a report setting forth all actions
10 taken in response thereto.

11 D. Settling Work Defendant shall submit three (3) copies of
12 all plans, reports, and data required by the Second Stage O&M
13 Work Plan to EPA. Settling Work Defendant shall simultaneously
14 submit three (3) copies of all such plans, reports and data to
15 the State.

16 E. All reports and other documents submitted by Settling
17 Work Defendant to EPA (other than the progress reports referred
18 to above) which purport to document Settling Work Defendant's
19 compliance with the terms of this Consent Decree shall be signed
20 by an authorized representative of the Settling Work Defendant.

21 F. Settling Work Defendant shall immediately notify EPA of
22 any failure to attain MCLs or State of California Action Levels
23 ("SALs") when such failures occur at a point of compliance as
24 defined under federal or State of California drinking water
25 regulations.

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2 XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

3 A. After review of the Second Stage O&M Work Plan or other
4 item which is required to be submitted for approval pursuant to
5 this Consent Decree, EPA, after reasonable opportunity for review
6 and comment by the State, shall: (1) approve, in whole or in
7 part, the submission; (2) approve the submission upon specified
8 conditions; (3) modify the submission to cure the deficiencies;
9 (4) disapprove, in whole or in part, the submission, directing
10 that the Settling Work Defendant modify the submission; or (5)
11 any combination of the above.

12 B. In the event of approval, approval upon conditions,
13 modification, disapproval or partial disapproval by EPA, pursuant
14 to this Section, Paragraph A, Settling Work Defendant shall
15 proceed to take any action required by the Second Stage O&M Work
16 Plan or other item, as approved or modified by EPA, subject only
17 to its right to invoke the dispute resolution procedures set
18 forth in Section XX (Dispute Resolution) with respect to the
19 modifications or conditions made by EPA. However, in the event
20 that EPA modifies the submission pursuant to this Section,
21 Paragraphs A and D, to cure continued deficiencies, and the
22 submission has a material defect not cured upon resubmittal, EPA
23 retains its right to impose stipulated penalties, as provided in
24 Section XXI (Stipulated Penalties), retroactive to the date of
25 the initial submittal.

26 C. Upon receipt of a notice of disapproval of a
27 resubmitted Second Stage O&M Work Plan or other item, or portion
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1 thereof, pursuant to this Section, Paragraph C or D, Settling
2 Work Defendant shall, within fourteen (14) days or such other
3 time as specified by EPA in such notice, correct the remaining
4 deficiencies and resubmit the Second Stage O&M Work Plan or other
5 item for approval. Any disapproval by EPA shall include an
6 explanation of why the deliverable is inadequate. If the
7 resubmitted deliverable is inadequate, Settling Work Defendant
8 shall be deemed to be in violation of this Consent Decree. Any
9 stipulated penalties applicable to the submission, as provided in
10 Section XXI (Stipulated Penalties), shall accrue during the
11 fourteen-day (14-day) period or otherwise specified period but
12 shall not be payable unless the resubmission is disapproved or
13 modified due to a material defect as provided in this Section,
14 Paragraph E.

15 Notwithstanding the receipt of an initial notice of
16 disapproval pursuant to this Section, Paragraph A, D or E,
17 Settling Work Defendant shall proceed, at the direction of EPA,
18 to take any action required by any non-deficient portion of the
19 submission. Implementation of any non-deficient portion of a
20 submission shall not relieve Settling Work Defendant of any
21 liability for stipulated penalties under Section XXI (Stipulated
22 Penalties).

23 D. In the event that a resubmitted Second Stage O&M Work
24 Plan or other item, or portion thereof, is disapproved by EPA,
25 EPA may again require the Settling Work Defendant to correct the
26 deficiencies, in accordance with the preceding Paragraphs. EPA
27 also retains the right to amend or develop the Second Stage O&M
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1 Work Plan or other item. Settling Work Defendant shall implement
2 the Second Stage O&M Work Plan or other item as amended or
3 developed by EPA, subject only to its right to invoke the
4 procedures set forth in Section XX (Dispute Resolution).

5 E. If upon resubmission, the Second Stage O&M Work Plan or
6 other item is disapproved or modified by EPA due to a material
7 defect, Settling Work Defendant shall be deemed to have failed to
8 submit the Second Stage O&M Work Plan or other item timely and
9 adequately unless Settling Work Defendant invokes the dispute
10 resolution procedures set forth in Section XX (Dispute
11 Resolution) and EPA's action is overturned pursuant to that
12 Section. The provisions of Section XX (Dispute Resolution) and
13 Section XXI (Stipulated Penalties) shall govern the
14 implementation of the O&M Activities and accrual and payment of
15 any stipulated penalties during dispute resolution. If EPA's
16 disapproval or modification is upheld, stipulated penalties shall
17 accrue for such violation from the date on which the initial
18 submission was originally required, as provided in this Section,
19 Paragraph C.

20 F. The Second Stage O&M Work Plan and other items required
21 to be submitted to EPA under this Consent Decree shall, upon
22 approval or modification by EPA, be enforceable under this
23 Consent Decree. In the event EPA approves or modifies a portion
24 of the Second Stage O&M Work Plan or other item required to be
25 submitted to EPA under this Consent Decree, the approved or
26 modified portion shall be enforceable under this Consent Decree.

27 G. Items required to be submitted for approval by EPA
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1 pursuant to this Consent Decree are set forth in the Second Stage
2 Statement of Work, Appendix 4 to this Consent Decree.

3 XIII. PROJECT COORDINATORS

4 A. Within thirty (30) days of the Effective Date of this
5 Consent Decree, Settling Work Defendant, Lockheed Martin, the UAO
6 Parties, the State and EPA will notify each other, in writing, of
7 the name, address and telephone number of their respective
8 designated Project Coordinators and Alternate Project
9 Coordinators. If a Project Coordinator or Alternate Project
10 Coordinator initially designated is changed, the identity of the
11 successor will be given to the other parties at least five (5)
12 working days before the change occurs, unless impracticable, but
13 in no event later than the actual day the change is made. The
14 Settling Work Defendant's Project Coordinator shall be subject to
15 disapproval by EPA and shall have the technical expertise
16 sufficient to adequately oversee all aspects of the O&M
17 Activities. The Settling Work Defendant's Project Coordinator
18 shall not be an attorney for any of the Settling Defendants in
19 this matter. He or she may assign other representatives,
20 including other contractors, to serve as a Site representative
21 for oversight of performance of daily operations during O&M
22 Activities.

23 B. Plaintiffs may designate other representatives,
24 including, but not limited to, EPA and State employees, and
25 federal and State contractors and consultants, to observe and
26 monitor the progress of any activity undertaken pursuant to this
27 Consent Decree. EPA's Project Coordinator and Alternate Project
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1 Coordinator shall have the authority lawfully vested in a
2 Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC)
3 by the National Contingency Plan, 40 C.F.R. Part 300. In
4 addition, EPA's Project Coordinator or Alternate Project
5 Coordinator shall have authority, consistent with the National
6 Contingency Plan, to halt any O&M Activities required by this
7 Consent Decree and to take any necessary response action when the
8 Project Coordinator determines that conditions at the Site
9 constitute an emergency situation or may present an immediate
10 threat to public health or welfare or the environment due to
11 release or threatened release of Waste Material.

12 C. EPA's Project Coordinator and the Defendants' Project
13 Coordinators will meet on a regular basis as deemed appropriate
14 by EPA's Project Coordinator.

15 XIV. FUNDING OF RESPONSE ACTIVITIES

16 A. Within sixty (60) days of the Effective Date, Lockheed
17 Martin shall establish and maintain financial security in the
18 amount of \$ 48 million, in one or a combination of the following
19 forms:

- 20 1. A surety bond guaranteeing performance of the O&M
21 Activities for the Upstream Facilities;
- 22 2. One or more irrevocable letters of credit;
- 23 3. A trust fund or combination of trust funds;
- 24 4. A guarantee to fund the O&M Activities for the
25 Upstream Facilities by one or more parent corporations or
26 subsidiaries, or by one or more unrelated corporations that have
27 a substantial business relationship with Lockheed Martin;
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1 5. A demonstration that Lockheed Martin satisfies the
2 requirements of 40 C.F.R. Part 264.143(f); or

3 6. A demonstration, by submittal of its annual report
4 on Form 10-K filed with the Securities and Exchange Commission,
5 that Lockheed Martin possesses the requisite financial ability to
6 assure completion of the O&M Activities for the Upstream
7 Facilities.

8 B. The amount of financial security that Lockheed Martin is
9 required to maintain shall be decreased in the following
10 increments:

11 1. Nine years after the Date of Commencement,
12 Lockheed Martin shall maintain financial security in the amount
13 of \$ 39 million.

14 2. Twelve years after the Date of Commencement,
15 Lockheed Martin shall maintain financial security in the amount
16 of \$ 31 million.

17 3. Fifteen years after the Date of Commencement,
18 Lockheed Martin shall maintain financial security in the amount
19 of \$ 18 million.

20 4. Upon decreasing the amount of financial security
21 as provided by this Paragraph, Lockheed shall make a new
22 demonstration of such financial security in the manner described
23 in Paragraph A.1 through A.6 of this Section.

24 C. Within sixty (60) days of the Effective Date, each
25 Settling Cash Defendant shall cause the funds in the escrow
26 account established pursuant to the settlement agreement reached
27 in the action entitled Lockheed Corporation v. Crane Company,
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1 United States District Court, Central District of California No.
2 CV 94-2717 MRP (Tx) ("Escrow Account") to be transferred into a
3 segregated account ("Second Consent Decree Account"), which shall
4 be used to satisfy Lockheed Martin's obligations as required by
5 this Consent Decree.

6 D. Within thirty (30) days prior to the Date of
7 Commencement, Lockheed Martin shall establish a trust account
8 ("O&M Trust Account"). The O&M Trust Account shall be used to
9 satisfy Lockheed Martin's obligation to fund the O&M Activities
10 for the Upstream Facilities and other obligations as required by
11 this Section XIV (Funding of Response Activities), Section VI
12 (Performance of the Work), Paragraph C.7, and Section XVIII
13 (Indemnification and Insurance), of this Consent Decree.
14 Lockheed Martin also shall fund transition activities and the
15 Settling Work Defendant's preparation of an integrated O&M manual
16 for the combined Plant Facilities as agreed to in a separate
17 agreement between Lockheed Martin and Settling Work Defendant..

18 1. The costs of O&M Activities with respect to the
19 Upstream Facilities, including but not limited to the costs of
20 rectifying any construction defect in the Upstream Facilities,
21 all costs of additional response actions required by EPA pursuant
22 to Section VII (Additional Response Actions) related to the
23 Upstream Facilities, and costs incurred for the Site pursuant to
24 Section VIII (EPA Periodic Review) shall be paid from the O&M
25 Trust Account subject to the limitations and in accordance with
26 the provisions set forth in this Section.

27 2. All costs of O&M Activities with respect to the
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1 Downstream Facilities, including but not limited to the costs of
2 rectifying any construction defect in the Downstream Facilities,
3 and all costs of additional response actions required by EPA
4 pursuant to Section VII (Additional Response Actions) related to
5 the Downstream Facilities shall be paid directly by the City and
6 shall not be subject to reimbursement from the O&M Trust Account.
7 The City's contracting and accounting systems shall be
8 established so as to clearly distinguish between costs incurred
9 for O&M Activities or other activities associated with the
10 Upstream Facilities and costs incurred for O&M Activities or
11 other activities associated with the Downstream Facilities.

12 3. Prior to the Date of Commencement and
13 contemporaneously with the execution of appropriate documents
14 under Section XIV, Paragraph L of this Consent Decree, the UAO
15 Parties shall execute such agreements as are necessary to assign
16 to the City of Burbank any and all express and implied
17 warranties, rights, claims or causes of action they have or may
18 have as against their construction contractors related to the
19 construction of the Blending Facility, specifically including,
20 but not limited to, claims for defects in the construction of the
21 Blending Facility, but not including claims arising from delays
22 in or excess costs of construction.

23 E. Lockheed Martin and the City shall, by January 1, 1999,
24 jointly retain an independent cost estimating consultant ("Cost
25 Consultant") acceptable to both parties and EPA, whose
26 responsibilities shall include preparation of the annual budgets
27 and audit reports for O&M Activities with respect to the Upstream
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1 Facilities required by this Section. The Cost Consultant may be
2 replaced by mutual agreement of Lockheed Martin and the City upon
3 thirty (30) days written notice to EPA and the Cost Consultant,
4 subject to approval by EPA. Either the City or Lockheed Martin
5 may petition EPA for the replacement of the Cost Consultant.

6 1. If Lockheed Martin, the City and EPA are unable to
7 agree upon a Cost Consultant by January 1, 1999, Lockheed Martin
8 and the City shall, within thirty (30) days thereafter, each
9 submit a list of three (3) cost estimating consultants to the
10 other party and to EPA, along with information regarding the
11 qualifications of each cost estimating consultant on its list.
12 Within ten (10) days after both lists have been submitted, the
13 City and Lockheed Martin may each veto one cost estimating
14 consultant from the other's list. EPA shall select the Cost
15 Consultant from the cost estimating consultants remaining on one
16 or both of the lists, unless all such consultants are
17 unacceptable to EPA.

18 2. The Cost Consultant may retain a subcontractor to
19 perform some of his or her functions, as described herein. Any
20 such subcontractor shall be approved by the City, Lockheed Martin
21 and EPA prior to performing any work.

22 3. In the event of the resignation of the Cost
23 Consultant, the City, Lockheed Martin and EPA shall attempt to
24 agree upon the selection of a replacement. If the parties cannot
25 agree upon a replacement, the procedures described in Paragraph
26 E.1 above shall be employed to select a replacement. The lists
27 of three (3) cost estimating consultants referred to in Paragraph
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1 E.1 shall be submitted forty-five (45) days prior to the
2 effective date of resignation of the Cost Consultant or such
3 other date as may be mutually agreed upon by the City, Lockheed
4 Martin and EPA.

5 4. The Cost Consultant's fees shall be paid from the
6 O&M Trust Account.

7 F. It shall be the Cost Consultant's responsibility to
8 independently use his or her best technical judgment to prepare
9 an annual budget for O&M Activities with respect to the Upstream
10 Facilities for each of the years during which such O&M Activities
11 are required by this Consent Decree ("Annual Budget"). The
12 Annual Budget shall be developed in the following manner:

13 1. No later than one hundred and twenty (120) days
14 prior to the Date of Commencement, Lockheed Martin shall provide
15 the Cost Consultant and the City with non-proprietary information
16 regarding its operation and maintenance costs with respect to the
17 Upstream Facilities for the prior year.

18 2. Ninety (90) days prior to the Date of Commencement,
19 and annually thereafter, the City may submit to the Cost
20 Consultant, Lockheed Martin and EPA its estimate of the cost of
21 O&M Activities with respect to the Upstream Facilities for the
22 one-year period beginning on the Date of Commencement or on the
23 anniversary thereof for the upcoming year. Such an estimate may
24 be submitted by the City in advance of each of the eighteen (18)
25 years for which O&M Activities are required by this Decree.

26 3. Sixty (60) days prior to the Date of Commencement,
27 and annually thereafter, Lockheed Martin and EPA may submit
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1 comments to the Cost Consultant on the City's estimate submitted
2 pursuant to Paragraph F.2 of this Section.

3 4. Thirty (30) days prior to the Date of Commencement,
4 and annually thereafter, the Cost Consultant shall establish the
5 Annual Budget based on: (1) O&M Activities expenditures with
6 respect to the Upstream Facilities during prior years; (2) the
7 City of Burbank's estimate; (3) Lockheed Martin's comments
8 thereon, if any; (4) EPA's comments thereon, if any; and (5) any
9 other cost estimating factors deemed relevant by the Cost
10 Consultant.

11 5. The Annual Budget shall contain the following cost
12 categories relating to the Upstream Facilities: direct labor,
13 contracted-for labor, power, natural gas, liquid phase carbon,
14 vapor phase carbon, laboratory costs, supplies and materials,
15 disposal costs, permitting costs, replacement costs, insurance
16 (including but not limited to insurance described solely in
17 Exhibit 3 to this Consent Decree), fees of the Cost Consultant
18 and any other cost categories related to the O&M Activities with
19 respect to the Upstream Facilities that the Cost Consultant deems
20 appropriate for cost accounting purposes. In addition, costs of
21 compliance with the provisions of Sections VII (Additional
22 Response Actions) with respect to the Upstream Facilities and
23 VIII (EPA Periodic Review) of this Consent Decree shall be deemed
24 to be O&M Activities and may be included in the Annual Budget.

25 6. The Cost Consultant shall include a 10% contingency
26 for each cost category in the Annual Budget.

27 7. Lockheed Martin, the City and EPA shall each have
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1 the right to invoke dispute resolution pursuant to Section XX
2 (Dispute Resolution) of this Consent Decree regarding the total
3 budgeted amount set forth in any Annual Budget, the amount
4 budgeted for any cost item, the inclusion or exclusion of any
5 item from the Annual Budget, or any other matter related to the
6 establishment of the Annual Budget.

7 G. Lockheed Martin shall ensure that the O&M Trust Account
8 contains funds equal to or in excess of the Annual Budget
9 established for the upcoming year as of the Date of Commencement,
10 and as of each anniversary of that date, by causing funds from
11 the Second Consent Decree Account or its own funds to be
12 transferred to the O&M Trust Account. The City shall have no
13 obligation to undertake O&M Activities with respect to the
14 Upstream Facilities if the O&M Trust Account has not been funded
15 in the manner required by this Paragraph.

16 H. The City shall submit monthly statements to the trustee
17 of the O&M Trust Account ("Trustee") for payment. Each statement
18 shall be broken down into the same cost categories as set forth
19 in the Annual Budget. The statement shall include copies of all
20 relevant documentation, including purchasing documents, backup
21 documentation for all internal costs, and all invoices, including
22 backup documentation to support all invoiced contracted-for
23 costs, and a declaration by an authorized representative of the
24 City that each amount requested in the statement is due and
25 payable to a party who provided materials or services for O&M
26 Activities with respect to the Upstream Facilities conducted in
27 accordance with the Second Consent Decree and the Second Stage
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1 O&M Work Plan. The City shall simultaneously provide a copy of
2 each monthly statement to the Cost Consultant, Lockheed Martin
3 and EPA.

4 1. Any monthly statement seeking payment for an
5 expenditure outside a cost category in the Annual Budget and any
6 statement which will cause the applicable Annual Budget cost
7 category amount to be exceeded must be accompanied by an
8 explanation of the necessity for that expenditure.

9 2. Disbursements by the Trustee.

10 a. The Trustee shall promptly pay all amounts
11 requested in a monthly statement that satisfies the requirements
12 of this Section. Lockheed Martin and EPA shall have the right to
13 invoke dispute resolution pursuant to Section XX (Dispute
14 Resolution) of this Consent Decree with regard to the necessity
15 for any expenditure for which an explanation is required, within
16 thirty (30) days of receipt of the monthly statement. If either
17 Lockheed Martin or EPA invokes dispute resolution as to any
18 amount included in a monthly statement, EPA shall make a
19 preliminary determination, within ten (10) working days of
20 dispute resolution being invoked, concerning whether the disputed
21 amount should be paid. Such amount shall be promptly reimbursed
22 to Lockheed Martin if Lockheed Martin thereafter prevails in
23 dispute resolution.

24 b. In the event that EPA decides to take over
25 some or all of the work related to the Upstream Facilities
26 required to be performed by the Settling Work Defendant pursuant
27 to Section XXII (Covenants Not to Sue by Plaintiffs), Paragraph
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1 F, or Section XVIII (Indemnification and Insurance), Paragraph B,
2 the Trustee shall reimburse EPA within thirty (30) days of EPA's
3 written demand for EPA's costs not inconsistent with the National
4 Contingency Plan which are incurred to take over and/or to
5 perform such work. In the alternative, EPA may elect to be
6 reimbursed for some or all of such costs as Future Site-Specific
7 Response Costs pursuant to Section XVII (Reimbursement of
8 Response Costs).

9 c. Notwithstanding whether EPA elects to be
10 reimbursed for such costs pursuant to this Section or pursuant to
11 Section XVII (Reimbursement of Response Costs), EPA shall not be
12 subject to the requirements of this Section, including but not
13 limited to Annual Budget and audit requirements, concerning such
14 costs.

15 d. As is set forth in Section XXII (Covenants Not
16 to Sue by Plaintiffs), Paragraph F of this Consent Decree, and
17 subject to the limitations described in that Section and
18 Paragraph, Lockheed Martin shall have the right to be reimbursed
19 by Settling Work Defendant for that portion of such costs which
20 is caused by the necessity for EPA to take over such work. As is
21 set forth in Section XVIII (Indemnification and Insurance),
22 Paragraph B, and subject to the limitations described in that
23 Section and Paragraph, the City of Burbank shall not be required
24 to reimburse Lockheed Martin for any portion of such costs if EPA
25 takes over the work pursuant to that Section and Paragraph.

26 3. The Cost Consultant shall audit the City's
27 requests for payments for expenditures on O&M Activities with
28